



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Applied Mathematics, Inc.  
**File:** B-227930  
**Date:** October 26, 1987

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### **DIGEST**

1. No technical transfusion occurred during discussions where the agency did not discuss the technical or management approach of the respective offerors.
2. Evaluated cost may become the award determinative factor where proposals are found technically equal, notwithstanding that the solicitation evaluation criteria assigned cost less importance than technical considerations.
3. Even where the protester demonstrated superior understanding in technical approach and is appropriately credited for it under the pertinent part of the solicitation evaluation scheme, the agency may reasonably find the protester's proposal technically equal to another proposal, which offered a lesser rated, but "good," technical approach, where the evaluators determine the particular technical approach is not sufficiently significant to be award determinative and the protester does not otherwise contest the technical evaluation.
4. An agency which relaxes a material solicitation requirement at one offeror's request is required to issue a written amendment to all offerors. However, even where the protester is not apprised of the material change, its protest is denied, where cost is the award determinative factor and the potential cost impact on the protester's proposal is \$90,000 and the awardee's cost is \$262,000 less than the protester's cost.

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### **DECISION**

Applied Mathematics, Inc. (AMI), protests the award of a contract to Analysis & Technology, Inc. (A&T), under request for proposals (RFP) No. N66604-87-R-1016, issued by the United States Naval Underwater Systems Center, Newport, Rhode Island. The solicitation is for the acquisition of

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engineering services in support of Fleet Exercise Reconstruction Programs. AMI contends that the Navy engaged in technical transfusion during discussions; that the evaluation was not conducted in accordance with the RFP evaluation criteria; and that the Navy improperly relaxed certain requirements in the RFP without issuing a written amendment.

We deny the protest.

The RFP, issued on December 16, 1986, requested the submission of technical and price proposals and contemplated the award of an indefinite delivery, indefinite quantity, cost-plus-fixed-fee contract. Section "M" of the RFP provided that technical proposals would be evaluated on the basis of six evaluation factors which, in descending order of importance, are:

- Personnel Resources
- Technical Approach
- Corporate Experience
- Management Approach
- Facilities
- Cost

Section "M" also provided that cost, although the least important evaluation factor, was still an important factor and should not be ignored; and that the degree of its importance would increase with the degree of technical equality of submitted proposals. Cost was to be evaluated on the basis of cost realism, fairness and reasonableness.

The Navy received five offers by the January 20, 1987, closing date. The contracting officer determined that only the proposals submitted by A&T and AMI were in the competitive range. AMI's proposal was rated "marginal" while A&T's proposal was "unacceptable" but capable of being made acceptable through discussions.

A&T's proposed cost plus fee was \$726,598 and AMI's proposed cost plus fee was \$1,058,024. Both offerors' cost proposals were evaluated for cost realism and A&T's proposed cost was found realistic. AMI's proposed cost, which included \$75,000 for 3,000 hours of computer time, was adjusted in the cost evaluation downward \$23,675, since, as discussed

below, the Navy intended to allow the successful offeror to use the government computer for 945 hours.

The contracting officer notified both firms that they were included in the competitive range and asked each of the two firms to address certain deficiencies noted in their proposals. The Navy further claims that during negotiations each offeror was verbally informed of its decision to provide access to the government's computers for a total of 945 hours. In an amendment to the solicitation dated June 5,<sup>1/</sup> the Navy requested best and final offers (BAFOs).

Upon receipt and evaluation of the BAFO's, both firms received an overall final rating of good and were deemed to be technically equal. Consequently, the technical evaluation panel recommended to the contracting officer that award be made to the offeror proposing the lowest cost.

A&T revised its BAFO costs plus fee to \$776,011 to reflect an increase in its direct labor costs. In its BAFO, AMI only revised its proposed profit and overhead allocation resulting in proposed total costs plus fee of \$1,038,787. The Navy conducted a post-negotiation cost analysis and concluded that both firms had submitted cost realistic BAFOs. On the basis of the foregoing, the Navy made the award to A&T, because it had the lower cost and the two proposals were considered technically equal.

AMI's contention that technical transfusion<sup>2/</sup> may have occurred during discussions is not supported by the record. The record shows that the only subjects of the Navy discussions with A&T concerned its proposed personnel, a minor matter in its management approach, its proposed use of the government computer, certain exceptions taken by A&T to contract provisions, and its proposed fee. The discussions did not communicate AMI's or any other competitor's management or technical approach. Therefore, no technical transfusion occurred.

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<sup>1/</sup> The amendment also made changes to certain provisions in the RFP; these changes however, are not germane to the resolution of this protest.

<sup>2/</sup> "Technical transfusion" is the government disclosure of technical information pertaining to a proposal that results in the improvement of a competitive proposal. Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.610(d)(2) (1986); Loral Terracom; Marconi Italiana, B-224908, B-224908.2, Feb. 18, 1987, 66 Comp. Gen. \_\_\_\_\_, 87-1 C.P.D. ¶ 182.

AMI's protest that the Navy failed to comply to the evaluation criteria in making the award selection is also not supported by the record. Where, as here, proposals are found technically equal, cost or price may become the determinative factor in making the award, notwithstanding that the evaluation criteria assigned cost or price less importance than technical considerations. Ship Analytics, Inc., B-225798, June 23, 1987, 87-1 C.P.D. ¶ 621; PRC Kentron, B-225677, Apr. 14, 1987, 87-1 C.P.D. ¶ 405. The judgment of the procuring agency concerning the significance of the difference in technical merit of the proposals and whether or not offers are technically equal is afforded great weight by this Office. PRC Kentron, B-225677, supra at 4.

AMI argues that its technical proposal showed that it already had over 50,000 lines of computer code necessary to more expeditiously fulfill contract requirements. AMI claims that other offerors would have to spend an estimated \$250,000 to duplicate this data, even assuming those offerors had the necessary high-level mathematical expertise. AMI argues that its technical approach would provide the Navy with the greatest value and its technical proposal should have been rated technically superior to A&T's proposal.

However, the Navy notes, and the record confirms, that AMI received appropriate credit in the technical evaluation for already having the lines of code; AMI's technical approach was rated "excellent" while A&T's technical approach was rated "good." The Navy further states: "the technical evaluation team did not find the presence or absence of a computer code an issue significant enough to warrant award of the contract to the offeror who had the code in hand, since the lines of code, while reflecting an approach and understanding of the problems involved in the contract, are not directly applicable to the tasks without adaptation." In this regard, although A&T did not have a code in hand, it showed in its proposal a clear understanding of the tasks involved in the contract and described an appropriate means of arriving at the contract goals.

As noted by the Navy each offeror proposed a different technical approach and both offerors received an overall "good" rating and were considered technically equal. In these circumstances, since AMI does not dispute the remainder of the technical evaluation, we do not conclude the agency's determination that the proposals were technically equal is unreasonable.

To the extent that AMI is actually protesting that it should have been given credit in the cost evaluation for the lines of code it had already developed, this protest basis is untimely and not for consideration under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1987), since the RFP did not provide for any such credit to be given and AMI did not timely protest the RFP evaluation criteria.

AMI finally contends that the Navy improperly relaxed the requirements of the solicitation by deciding to provide the successful offeror with a total of 945 hours of government computer time at no cost although the solicitation required offerors to perform all categories of labor only on contractor facilities. AMI states that it was never informed of this change and that the Navy should have issued a written amendment to reflect its relaxed requirements as required by the FAR, 48 C.F.R. § 15.606(a).

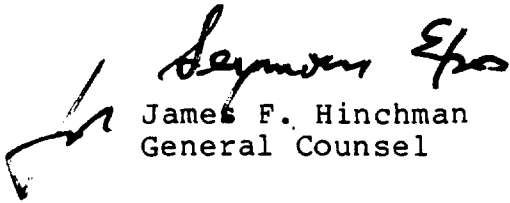
The record confirms that at A&T's request, A&T was permitted to utilize 945 hours of government computer time. Although the Navy claims it also verbally advised the protester of this relaxation of the specification requirements, AMI denies this claim. Moreover, in the written amendment to the RFP issued subsequent to this alleged advice, no mention was made of this material change.

It is a fundamental principle of competitive procurement that offerors be provided a common basis for submission of proposals. W.D.C. Realty Corp., B-225468, Mar. 4, 1987, 66 Comp. Gen. \_\_\_, 87-1 C.P.D. ¶ 248 at 5. As the protester points out, it is equally fundamental that when, either before or after receipt of proposals, the government changes or relaxes its requirements, it must issue a written amendment to notify all offerors of the changed requirements and to afford them an opportunity to respond to the revised requirements. Id.; FAR, 48 C.F.R. §§ 15.606(a) and (b). We have sustained protests, where, as here, protesters deny that they were verbally advised of material changes in the solicitations. CoMont, Inc., 65 Comp. Gen. 66 (1985), 85-2 C.P.D. ¶ 555; I.E. Lovick & Associates, B-214648, Dec. 26, 1984, 84-2 C.P.D. ¶ 695. However, we will only sustain a protest that the agency failed to issue a written amendment for a relaxation of a specification requirement for one or more offerors, if the protester was, or may have been, prejudiced by this failure. AT&T Communications Corp., 65 Comp. Gen. 412 (1986), 86-1 C.P.D. ¶ 247; Data Vault Corp., B-223937, B-223937.2, Nov. 20, 1986, 86-2 C.P.D. ¶ 594.

In this case, even if AMI was not advised that 945 hours of government computer time was available, see CoMont, Inc., 65 Comp. Gen. supra, the record shows that AMI was not prejudiced by the failure to receive a written amendment.

The cost impact on AMI's proposal for its proposed use of 3,000 hours of its own computer time was only \$90,720 by AMI's own calculations. Since evaluated cost was the award determinative factor and AMI's BAFO costs and fee was \$262,776 higher than A&T's cost and fee, AMI would not have been the successful offeror even if all its 3,000 hours of proposed computer time were supplied by the government. In any case, AMI does not contend that it would change its technical approach to take advantage of the offered government computer time.

The protest is denied.



James F. Hinchman  
General Counsel